

MEMORANDUM

DATE: June 7, 2021

To: Michael Fossati, Senior Planner
Lillian VanHua, AICP, Associate Planner

FROM: Theresa Wallace, AICP, Principal
Matthew Wiswell, AICP, Planner

SUBJECT: 308 Sango Court Project Categorical Exemption

This memorandum supports the finding that the proposed 308 Sango Court Project (proposed project) would be exempt from further review pursuant to California Environmental Quality Act (CEQA) Section 15194 (Affordable Housing). The project site is made up of a single parcel located at 308 Sango Court in the City of Milpitas, Santa Clara County.

As described in Attachment A, Project Description, the proposed project would consist of the demolition of the existing building and associated improvements on the site and the construction of a five-story apartment building with 85 residential units over one-level, podium, on-grade parking.

EXEMPTIONS FOR AFFORDABLE HOUSING AND RESIDENTIAL INFILL PROJECTS

Section 21084 of the Public Resources Code requires the CEQA Guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from environmental review pursuant to CEQA. In response to that mandate, the Secretary for Natural Resources identified various classes of projects in the CEQA Guidelines that do not have a significant effect on the environment to be categorically exempt.

In addition, Article 12.5 of the CEQA Guidelines includes exemptions for affordable housing and residential infill projects provided that certain threshold criteria are met.

Section 15194. Affordable Housing Exemption

Pursuant to CEQA Guidelines Section 15194, CEQA does not apply to any development project that meets the following criteria:

a. The project meets the threshold criteria set forth in section 15192.

Please refer to the following section. The proposed project would meet the threshold criteria set forth in Section 15192.

b. The project meets the following size criteria: the project site is not more than five acres in area.

As described in Attachment A, the project site is approximately 1.11 acres in size.

- c. *The project meets both of the following requirements regarding location: (1) The project meets one of the following location requirements relating to population density: (A) The project site is located within an urbanized area or within a census-defined place with a population density of at least 5,000 persons per square mile. (B) If the project consists of 50 or fewer units, the project site is located within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons. (C) The project is located within either an incorporated city or a census defined place with a population density of at least 1,000 persons per square mile and there is no reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project. (2) The project meets one of the following site-specific location requirements: (A) The project site has been previously developed for qualified urban uses; or (B) The parcels immediately adjacent to the project site are developed with qualified urban uses. (C) The project site has not been developed for urban uses and all of the following conditions are met: (i) No parcel within the site has been created within 10 years prior to the proposed development of the site. (ii) At least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses. (iii) The existing remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses.*

CEQA Guidelines Section 15191 defines an “urbanized area” as an incorporated city that either by itself or in combination with two contiguous incorporated cities has a population of at least 100,000 persons. The City of Milpitas has a population of 79,517.¹ The City of Milpitas is immediately bordered to the south by the City of San Jose, which has a population of 1,027,690.² Therefore, the project site is located within an urbanized area per criterion (1)(A).

As described in Attachment A, Project Description, the project site is currently developed with a two-story industrial building and has therefore been previously developed for qualified urban uses per criterion (2)(A). Therefore, the proposed project would meet both of the above requirements regarding location.

- d. *The project meets both of the following requirements regarding provision of affordable housing. (1) The project consists of the construction, conversion, or use of residential housing consisting of 100 or fewer units that are affordable to moderate-income and low-income individuals or households. (2) The developer of the project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 30 years, at monthly housing costs deemed to be “affordable rent” for moderate income, lower income, very low income, and extremely low income households, as determined pursuant to Section 50053 of the Health and Safety Code.*

¹ United States Census Bureau. 2019. Milpitas city, California. Website: <https://data.census.gov/cedsci/profile?g=1600000US0647766> (accessed May 2021).

² United States Census Bureau. 2019. San Jose city, California. Website: <https://data.census.gov/cedsci/profile?g=1600000US0668000> (accessed May 2021).

As described in Attachment A, Project Description, the proposed project would consist of the construction of residential housing consisting of 85 affordable residential units and an executed agreement imposing appropriate rental restrictions on the affordable units would be required. Therefore, the proposed project would meet both of the above requirements.

Section 15192. Threshold Requirements For Exemptions For Agricultural Housing, Affordable Housing, And Residential Infill Projects

In order to qualify for an exemption set forth in section 15192, a housing project must meet all of the threshold criteria set forth below.

- a. The project must be consistent with: (1) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete; and (2) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete, unless the zoning of project property is inconsistent with the general plan because the project property has not been rezoned to conform to the general plan.*

As described in Attachment A, at the time the application for the proposed project was submitted (December 20, 2019), the City's General Plan Land Use Map designated the project site as Boulevard Very High Density Mixed Use (BVMU).³ The BVMU category allows for projects that include a wholly residential or non-residential concept or a project that integrates residential and non-residential uses vertically or horizontally within a project site. The project site is zoned Very High Density Mixed Use (MXD3), which includes multi-family housing as a permitted use.⁴ Therefore, the proposed project would be consistent with both the general plan and zoning ordinance that existed on the date the application was submitted.

- b. Community-level environmental review has been adopted or certified.*

An Environmental Impact Report for the 2040 Milpitas General Plan was certified on March 9, 2021. Additionally, the project site is located within the Transit Area Specific Plan (TASP), for which an Environmental Impact Report was also certified for in 2008.

- c. The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.*

³ Milpitas, City of. 1994. City of Milpitas General Plan. Available online at: <https://www.ci.milpitas.ca.gov/wp-content/uploads/2021/03/General-Plan-Adopted-Dec-1994-reduced.pdf> (accessed April 23, 2021).

⁴ Milpitas, City of. 2016. City of Milpitas Parcel Map Viewer website: www.ci.milpitas.ca.gov/milpitas/departments/maps/ (accessed April 23, 2021).

As described in Attachment A, Project Description, the proposed project would connect to existing utilities via linkages on Sango Court, including connections to a 12-inch water line, 8-inch wastewater line, 15-inch storm drain, and a connection to the existing joint utility trench for gas and electrical service.

- d. The site of the project: (1) Does not contain wetlands, as defined in Section 328.3 of Title 33 of the Code of Federal Regulations. (2) Does not have any value as an ecological community upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection. (3) Does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code. (4) Does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.*

As described in Attachment A, Project Description, the project site is currently developed a two-story industrial building that includes warehouse and office space, loading docks, paved surface parking, and landscaped areas, including mature trees. While the project site does include ornamental landscaping, the project site does not contain wetlands or habitat of ecological value to animals, birds, plants, fish, amphibians, or invertebrates depend on for their conservation and protection.

- e. The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.*

The project site is not included on any list of facilities or sites compiled pursuant to Section 65962.5 of the Government Code (i.e., the Cortese List).⁵

- f. The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the following steps have been taken in response to the results of this assessment: (1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements. (2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.*

⁵ California Environmental Protection Agency. 2021. Cortese List Data Resources. Website: <https://calepa.ca.gov/sitecleanup/corteselist/> (accessed June 2021).

As described above and in Attachment A, Project Description, the project site is located within the TASP, and therefore applicable policies from the TASP would apply. TASP Policy 5.20 requires parcels with no identified contamination to complete a Phase I Environmental Site Assessment (ESA) to determine the potential for ground water, soil, or other contamination related to previous land uses. If any potential for contamination is determined to exist that could adversely affect human health for residential uses, a Phase II ESA would be required. If appropriate, engineering controls and design measures would be required to be implemented to mitigate the potential risk of post-development vapor intrusion into buildings.

- g. The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code.*

The project site is fully developed with a warehouse building. The only historic resources in the TASP Area that is listed in the City's Register of Cultural Resources is the Old Ford Motor Assembly Plant now known as the Great Mall, which is located approximately 0.5 miles north of the project site.

- h. The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.*

The project site is located within a developed area of the City and is not located within a moderate, high, or very high Fire Hazard Severity Zone.⁶

- i. The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.*

The project site is generally surrounded by institutional, commercial, and residential uses, including future multi-family residential uses at 355 Sango Court. None of these uses have an unusually high risk of fire or explosion from materials stored or used.

- j. The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.*

As described above, a Phase I ESA would be required to determine whether the project site has potential for ground water, soil, or other contamination that could present a risk of public health exposure. If the site does have the potential for contamination, engineering controls and design measures would be required to be implemented to mitigate the potential risk of exposure to the public.

- k. Either the project site is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code*

⁶ Milpitas, City of. 2020. *Draft Environmental Impact Report – 2040 Milpitas General Plan (SCH No. 2020070348)*. Figure 3.8-1. Fire Hazards Map. November.

respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

The project site is not within a delineated earthquake fault zone or seismic hazard zone.⁷

- l. Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.*

The project site is not located within a Landslide Hazard area or a Dam Inundation Area.^{8,9} The project site is located within a Special Flood Hazard Zone;¹⁰ however, the proposed project would be required to comply with Section XI-15-5 of the City's Municipal Code, which includes requirements for flood hazard reduction.

- m. The project site is not located on developed open space.*

As described in Attachment A, Project Description, the project site is currently developed with a two-story industrial building and is not located on developed open space.

- n. The project site is not located within the boundaries of a state conservancy.*

The project site is not located within any State Conservancies.¹¹

- o. The project has not been divided into smaller projects to qualify for one or more of the exemptions set forth in sections 15193 to 15195.*

The proposed project has not been divided into smaller projects. The proposed project has been wholly described in Attachment A, Project Description, and does not include any later phases or off-site activities.

OTHER EXEMPTIONS

In addition to CEQA Guidelines Section 15194, the proposed project may also be eligible for an exemption pursuant to CEQA Guidelines Section 15195 (Residential Infill), which includes similar requirements to CEQA Guidelines Section 15194. Additionally, as mentioned above, the project site is located within the TASP Area, and therefore could be exempt from further review under CEQA

⁷ Milpitas, City of. 2020. *Draft Environmental Impact Report – 2040 Milpitas General Plan (SCH No. 2020070348)*. Figure 3.6-1. Earthquake Faults. November.

⁸ Milpitas, City of. 2020. *Draft Environmental Impact Report – 2040 Milpitas General Plan (SCH No. 2020070348)*. Figure 3.6-5. Landslide Potential.

⁹ Milpitas, City of. 2020. *Draft Environmental Impact Report – 2040 Milpitas General Plan (SCH No. 2020070348)*. Figure 3.9-3. Dam Inundation Areas.

¹⁰ Milpitas, City of. 2020. *Draft Environmental Impact Report – 2040 Milpitas General Plan (SCH No. 2020070348)*. Figure 3.9-2. FEMA Flood Hazard Zones.

¹¹ California Natural Resources Agency. Conservancies. Website: <https://files.resources.ca.gov/conservancies/> (accessed June 2021).

pursuant to Section 15168(c) of the CEQA Guidelines. A program EIR was prepared and certified for the TASP in 2008, and the proposed project could be found to be within the scope of the project described in the TASP EIR. However, as described above, the proposed project would meet the requirements of CEQA Guidelines Section 15194, and no further review pursuant to CEQA would be required.

CONCLUSION

As described above, the proposed project is exempt from CEQA pursuant to CEQA Guidelines Section 15194. Additionally, the proposed project would meet the threshold requirements described in CEQA Guidelines Section 15192. Therefore, an exemption is the appropriate terminal CEQA document for the proposed project.

Attachment A: Project Description